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Report of the Special Rapporteur on the human rights of migrants on the impact of bilateral and multilateral trade agreements on the human rights of migrants

Note by the Secretariat

The Secretariat has the honour to transmit the report of the Special Rapporteur on the human rights of migrants, prepared pursuant to Human Rights Council resolution 17/12. In it, the Special Rapporteur expresses concern that, while trade liberalization has led to economic growth and social welfare generally, such progress has sometimes come at the expense of the human rights of migrants. Trade is not inherently negative, but the power imbalances, protectionism and national interests that influence the global economy have resulted in trade systems that exacerbate the precariousness of low-wage migrant workers and directly and systematically infringe upon their human rights. Facilitated and well-regulated mobility that is supported by comprehensive and robust institutional frameworks is necessary to ensure inclusivity and equity in the enjoyment of the benefits of trade for all migrants. In the report, the Special Rapporteur seeks to offer States practical guidance and engage international organizations, the private sector, trade unions and other civil society entities in the full realization of migrants' rights.

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I. Introduction

1. The present report is being submitted pursuant to Human Rights Council resolution 17/12. It briefly outlines the activities of the Special Rapporteur on the human rights of migrants from 1 April 2015 to 19 April 2016. The thematic section is dedicated to bilateral and multilateral trade agreements and their impact on the human rights of migrants.

II. Activities carried out by the Special Rapporteur

A. Participation in consultations and conferences

2. The Special Rapporteur was consulted by the Special Adviser on the Summit on Addressing Large Movements of Refugees and Migrants and provided oral and written input towards the development of her report on that issue.

3. The Special Rapporteur also participated and contributed to a number of international and regional dialogues and conferences, including a meeting of the Department of Economic and Social Affairs on international migration and a consultation among international organizations organized by the International Organization for Migration (IOM) in the framework of the Migrants in Countries in Crisis Initiative.

B. Country visits

4. Owing to the continued arrival of unprecedented numbers of irregular migrants to European borders, the Special Rapporteur has remained engaged in the issue. He visited Brussels in June 2015 to meet with representatives of European Union institutions and debrief them on the findings contained in his report on European Union border management (A/HRC/29/36). He provided suggestions on key European Union policy documents, such as the European Agenda on Migration and the report of the European Parliament Committee on Civil Liberties, Justice and Home Affairs on the situation in the Mediterranean and the need for a holistic European Union approach to migration. He also briefed the Interministerial Committee on Human Rights of Italy and the European Parliament Subcommittee on Human Rights.

5. The Special Rapporteur's visit to Australia in October 2015 was postponed to November 2016. He has reiterated his request to visit Nauru and looks forward to receiving a response and confirmation of the dates for a visit in November 2016. The Special Rapporteur looks forward to his visits to Angola and Greece in May 2016.

III. Impact of bilateral and multilateral trade on the human rights of migrants

A. Background

6. The precarious status and widespread exploitation of migrants, particularly low-wage workers, continues to be a matter of ongoing concern for the Special Rapporteur. As increasing attention has been given to the relationship between free trade and bilateral and multilateral investment agreements on human rights generally, the Special Rapporteur seeks to examine more closely the impact of trade on the human rights of migrants.

7. Migrant workers account for 150.3 million of the world's approximately 232 million international migrants, and it is expected that the number of workers crossing borders in search of security and employment will continue to increase.[1] The Special Rapporteur believes in the power of trade to catalyse economic growth and advance social welfare, but notes that trade has not always led to inclusive, equitable and sustainable development outcomes for all. World Bank estimates indicate that even a 3 per cent increase in migrant labour from developing to high-income countries during the period 2005-2025 would yield gains to the global economy of $356 billion.[2]

8. The Special Rapporteur understands that trade in itself is not the culprit of migration challenges, nor can it remedy all related ills, but he maintains that fostering a culture of transparency, accountability and ethical business practice while respecting the human rights of migrants can reap positive development outcomes. Over the past two decades, most Governments have concluded preferential trade agreements that incorporate human rights provisions. While this has been a positive development, it has also resulted in increased fragmentation in the interpretation of international human rights standards, as well as a prejudicial application of labour mobility arrangements and immigration laws, effectively infringing upon the human rights of migrant workers and their families. The Special Rapporteur's assessment includes not only the instabilities triggered by the power imbalances, protectionism and national interests that have become embedded in the international trade regime, but also the ways in which trade can serve as a vehicle for advancing human rights, development and better opportunities for all migrant workers.

9. In writing the present report, the Special Rapporteur recognizes the work of the following United Nations bodies, mechanisms and policy documents: the human rights treaty bodies, the universal periodic review, other special procedure mandate holders, the Special Representative of the Secretary-General on International Migration and Development, the International Labour Organization (ILO), the United Nations Conference on Trade and Development (UNCTAD), the High-level Dialogue on International Migration and Development, the Global Migration Group and the 2030 Agenda for Sustainable Development. The Special Rapporteur also recognizes the work of IOM and the Global Forum on Migration and Development.

10. The Special Rapporteur consulted a human rights impact assessment and scoping study currently being conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Economic Commission for Africa and Friedrich-Ebert-Stiftung on the Continental Free Trade Area. The Special Rapporteur also consulted experts from the United Nations, academia and civil society organizations.

B. Relationship between international trade and migration in the context of globalization

11. International trade is the exchange of goods or services between nations. The foundation of international trade law is established by international treaties and agreements, the domestic laws of a State party to a trade agreement, and case law on the resolution of trade disputes between States. Trade agreements may consist of bilateral and plurilateral arrangements or multilateral arrangements, and recent agreements have included chapters or protocols on investment.

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[1] International Labour Organization, *Global Estimates on Migrant Workers: Results and Methodology — Special Focus on Migrant Domestic Workers* (Geneva, International Labour Office, 2015).

[2] World Bank, *Global Economic Prospects: Economic Implications of Remittances and Migration* (Washington, D.C., 2006).

12. Traditionally, migration has only been regulated at the national level, with migration and trade considerations operating in separate spheres. With globalization, however, trade policies and migration policies have become more interconnected owing to the desire to liberalize economies and facilitate the mobility of labour between countries and regions. Migrants are rarely viewed as people with rights, but instead as "factors of production" in trade and may be "commoditized"[3] in terms of the services they can provide or the goods they can produce. Even in the current neoliberal economic climate, trade negotiators are often confronted with barriers, such as restrictive immigration policies, obstacles to visa issuance, discrimination against foreign workers and limited recognition of professional qualifications, that are shaped by fluctuating labour market needs and national security concerns.

13. Migration schemes, which also respond to regional variations in sectoral demands for labour and migratory patterns, have not managed to keep pace with the rapid increase in mobility. This has triggered a resurgence of non-traditional, precarious and informal types of work that exist beyond the regulatory framework, especially in economic sectors, such as domestic work, agriculture, food processing and packaging, construction, hospitality, health and elderly care, tourism, fisheries and extraction, that can be delocalized only with difficulty.

Limited treatment of migrants in multilateral trade negotiations

14. The General Agreement on Tariffs and Trade first introduced the concept of a multilateral trading system founded on the principles of non-discrimination and reciprocity. Adopted after the end of the Second World War, the Agreement aimed to significantly reduce tariffs and barriers to trade worldwide.

15. The Uruguay round of negotiations (1986-1994) ambitiously sought to expand the competence of the General Agreement on Tariffs and Trade into new areas, such as trade in services, capital, intellectual property, textiles and agriculture, but focused almost exclusively on persons linked to a commercial presence (intra-corporate transferees) and high-skilled labour. Limited mention of labour in the multilateral system occurs in the General Agreement on Trade in Services, mode IV, specifically article I:2 (d), which covers the mobility of "natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service". According to the annex on movement of natural persons supplying services under the Agreement, mode IV does not concern itself with individuals seeking access to the employment market in the destination country, nor does it affect processes regarding citizenship, residence or employment on a permanent basis.

16. While some States have insisted that the World Trade Organization (WTO) address the issue of "social dumping" through the inclusion of trade provisions requiring States parties to observe minimum workers' rights, the responsibility of regulating labour standards has been kept outside of multilateral trade negotiations.

17. Since 2001, several attempts have been made during the Doha round to expand the classes of workers covered by the General Agreement on Trade in Services, by recognizing developing countries' comparative advantage across specific service sectors and abandoning the economic needs test, which leaves States wide discretion on which workers to admit. Even after the 2015 WTO ministerial conference in Nairobi, however, negotiations have still not resulted in solid commitments to low-wage labour.

[3] See the Declaration concerning the Aims and Purposes of the International Labour Organization, in which the ILO General Conference reaffirmed that labour is not a commodity.

Trend towards regionalism and the growth of preferential trade agreements

18. With global discussions on trade stalled at WTO, there has been a marked surge in the number of regional and preferential trade agreements. By 2013, the number of such agreements had more than quadrupled, with all WTO members being a party to at least one preferential trade agreement.[4] As of 1 February 2016, WTO had received 625 notifications of regional trade agreements, of which 425 are currently in force.[5]

19. Regional and preferential trade agreements reflect a continuum of approaches to labour mobility. The Common Market for Eastern and Southern Africa (COMESA), the European Economic Area, the European Free Trade Association and the European Union allow for full mobility of labour across sectors. This is particularly salient since migration predominantly occurs between countries within the same geographic region. In 2015, 87 per cent of migrants living in Africa originated from another country in the region, compared with 82 per cent of migrants in Asia, 66 per cent of migrants in Latin America and the Caribbean and 53 per cent of migrants in Europe.[6]

20. As tariffs have been reduced around the world, the central focus of trade has shifted to advancing economic integration and the penetration of certain sectors. Recent preferential trade agreements are increasingly adopting migration governance mechanisms such as visa and asylum request procedures and provisions similar to those contained in mode IV of the General Agreement on Trade in Services, or expanding the coverage of the Agreement; migrant return guarantees; institutionalized recruitment; and skills-testing. That said, these agreements are still dictated by the geopolitical interests of high-income countries, which favour high-skilled workers and temporary employment.

21. The Special Rapporteur reiterates his concern that a dependence upon discretionary and unilaterally defined admissions, as well as a lack of legal entitlements, endangers human rights and engenders a precariousness that leaves migrant workers vulnerable to exploitation and abuse. Facilitated and well-regulated mobility mechanisms are necessary to protect the human rights of migrants and to realize the numerous benefits of trade and migration, which include economic growth, the creation of jobs, increased competitiveness and innovation.

IV. International trade agreements and their impact on the human rights of migrants

22. The scope of the human rights protections afforded migrants in international trade agreements has been determined by whether international commercial treaties reference a specific human rights or labour instrument and the manner in which the protection is operationalized or enforced.

23. The following sections will address both the direct and structural impact of bilateral and multilateral trade agreements on the human rights of migrants. The complexities resulting from the current tendency towards regionalism and preferentialism in concluding international trade agreements, combined with few empirical studies on the trade-human rights nexus, render it difficult to determine the exact impact of trade on migrants. Accordingly, the information available will be presented and areas for further consideration by the Special Rapporteur will be identified. Themes that have already been addressed by

[4] WTO database on preferential trade agreements (ptadb.wto.org).

[5] See https://www.wto.org/english/tratop_e/region_e/region_e.htm.

[6] United Nations, Department of Economic and Social Affairs, "Trends in international migration, 2015", No. 2015/4 (December 2015).

the Special Rapporteur in his previous reports on labour exploitation (A/HRC/26/35) and recruitment practices (A/70/310) will be mentioned briefly in the context of international trade. Examples of good practices and key features of existing trade agreements towards the full realization of human rights are provided throughout the present report.

A. Direct impact on the rights of migrants

Constraints on freedom of movement

24. International human rights law recognizes the right of any individual to freedom of movement within the borders of his or her country, as well as the right to leave his or her country and return. Admittedly, there is no corresponding right to enter into the territory of another State, and States retain the sovereign authority to regulate immigration. Still, even when making immigration decisions, under international law States are still required to respect, promote and fulfil their human rights obligations to all, regardless of their status.

25. The Special Rapporteur is concerned that, in spite of the protections for migrants contained in the international human rights framework, transnational migration laws and regulations have been restrictive and segmented by skill, rather than protective. Within the multilateral framework, the liberalization of temporary workers under the General Agreement on Trade in Services covers only 5 per cent of world services trade. Moreover, of the few commitments that were made by States in mode IV of the Agreement, only 17 per cent relate to low-skill trade for temporary workers.[7] Conversely, 70 per cent target high-skilled services occupations, 25 per cent target executives, managers and specialists, and 43 per cent cater to intra-corporate transferees.[8]

26. Despite a global boom in labour mobility agreements during the 1990s, geographic biases prevailed, reinforcing power imbalances between sending and receiving States, rather than remedying them. States members of the Organization for Economic Cooperation and Development (OECD) registered a fivefold increase in the number of bilateral labour mobility agreements and Latin American countries doubled their numbers; countries in Asia and Africa, on the other hand, failed to register the same figures.[9]

27. The Special Rapporteur remains concerned that States have not analysed their own labour market needs across sectors and adjusted mobility allowances accordingly. Even in cases where trade arrangements allow for mobility across all sectors, immigration determinations in receiving countries are heavily influenced by economic pressures, political ties and traditional admission practices, completely disregarding the overwhelming evidence of the benefits of a well-regulated migration. During the Special Rapporteur's visit to the European Union institutions in Brussels, he noted the high demand for unskilled labour in several sectors, including agriculture, hospitality, construction and domestic work, which generally goes unrecognized, thus fostering important underground labour markets where irregular migrants are exploited. He observed that the European Union migration framework has yet to be accompanied by a parallel development of opportunities for migrants to seek regular channels for temporary "unskilled" jobs.

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[7] Marion Panizzon, "Standing together apart: bilateral migration agreements and the temporary movement of persons under 'Mode 4' of GATS", Working Paper No. 77 (Centre on Migration, Policy and Society, University of Oxford, 2010).

[8] States have demonstrated a preference for regulating medium- and low-wage migration in bilateral labour mobility agreements, which are different from trade agreements (see paras. 65-69 below).

[9] *World Economic and Social Survey 2004: International Migration* (United Nations publication, Sales No. E.04.II.C.3).

28. The Special Rapporteur also wishes to draw attention to States entering new agreements that undercut existing labour standards and mobility arrangements to the detriment of migrant labour. The negotiation of the Tripartite Free Trade Area among COMESA, the East African Community and the Southern African Development Community (SADC) illustrates some of the challenges associated with overlapping commitments between regional communities at various stages of integration. Of the 26 countries that belong to a regional economic community, 12 belong to at least 2 of the communities and a number of countries are negotiating to join different customs unions, implying that citizens of some States will enjoy greater mobility than others.

29. The practical effect of constrained mobility has been that States fail to acknowledge and regulate informal and underground labour markets. Consequently, migrants are victims of deceptive recruitment practices, work in unsafe working conditions, become more vulnerable to labour exploitation at the hands of unscrupulous employers and live in constant fear of being deported. Where adequate provisions are not made to facilitate mobility, migrants may respond to unrecognized labour needs by seeking out irregular channels and covert intermediaries, or by overstaying to gain employment, thus risking their lives and welfare.

Non-discrimination, equality of opportunity and treatment

30. International human rights law confers protections to all individuals within a State's jurisdiction, regardless of migratory status. Similarly, the ILO comprehensive tripartite system of labour protections provides coverage to all workers, regardless of legal status. Emerging jurisprudence at the regional level reinforces the principle that international human rights and labour standards and national labour laws apply to all migrant workers without distinction.

31. The Special Rapporteur remains concerned, however, that lack of data on and of acknowledgement of the contributions of migrants, both in fulfilling low-wage and medium-wage work, compounded with discriminatory attitudes and high rates of unemployment in destination countries, have resulted in the limited inclusion of mobility provisions in trade agreements for low-wage workers and a subordinated status for migrant labour. Migrants may face discrimination, both in the initial determinations that States make to enter into trade agreements and with respect to decisions about immigration. The Association of Southeast Asian Nations (ASEAN) Economic Community reduces barriers to migration, but only for high-wage occupations, which represent 1.5 per cent of the labour market.[10] Migrants in low-wage occupations continue to face discriminatory laws that exclude them from regular migration.

32. Even migrants with permanent status experience labour market disadvantages, discrimination, xenophobia and ill-treatment. Approximately 16 per cent of migrants employed in OECD countries are in low-wage jobs, compared to 7 per cent of nationals.[11] This is not owing to low educational levels or training, as corresponding data indicates that many migrant workers are overqualified.

33. Persistent discrimination against migrants manifests itself on a day-to-day basis in multiple ways: the irregular channels and covert agents that migrants must seek out to gain entry into destination countries; the retention of workers' passports or identity documents; and the exploitative work conditions that migrants endure. During the Special Rapporteur's

[10] Guntur Sugiyarto and Dovelyn Rannveig Agunias, "A 'freer' flow of skilled labour within ASEAN: aspirations, opportunities and challenges in 2015 and beyond", Issues in Brief, No. 11 (IOM Regional Office for Asia and the Pacific and the Migration Policy Institute, December 2011).

[11] ILO, *Fair Migration: Setting an ILO Agenda* (Geneva, International Labour Office, 2014).

visits, he has noted the discriminatory categorization of migrants based on their nationality, whereby some nationalities are seen as more valuable than others and are paid higher salaries for carrying out the same job (e.g., domestic work).

34. The Special Rapporteur is also aware of situations where discrimination against migrants can escalate to verbal intimidation, physical and sexual violence or death. The United Nations has found that 59 per cent of trafficked Cambodian migrants interviewed aboard Thai fishing vessels reported witnessing the murder of a co-worker.[12]

35. States have taken a greater number of measures to address systemic discrimination against migrants through the inclusion of non-discrimination clauses in their trade agreements, with monitoring and enforcement arrangements. The Dominican Republic-Central America-United States of America Free Trade Agreement (CAFTA-DR) provides for, inter alia, cooperation activities that increase protection against workplace-related discrimination and promote a culture of compliance with labour standards. The labour standards in States parties are monitored through a project carried out in conjunction with ILO.

Pervasive and multifaceted workplace exploitation

36. The Special Rapporteur has already addressed labour exploitation extensively in a previous report (A/HRC/26/35). Here, he emphasizes that provisions for robust, comprehensive and binding institutional frameworks are necessary within trade agreements to ensure compliance with labour standards and safeguard the rights of migrant workers.

37. Monitoring and enforcement mechanisms have been included in some trade agreements and make use of several mediums to detect and eradicate systemic abuse, including through the establishment and training of labour inspectorates, regular labour inspections and independent auditing on labour conditions at all stages of the value-addition and supply chains. In April 2013, in the context of CAFTA-DR, the Governments of Guatemala and the United States signed an "enforcement plan" containing 18 commitments aimed at addressing institutional weaknesses in the labour protection framework of Guatemala. These included strengthening the enforcement capacity of labour inspections, protecting workers against the sudden closure of firms, ensuring labour law compliance by export companies and enforcing decisions of the labour judiciary. Guatemala engaged an additional 100 labour inspectors, as well as other staff, in preparation for the agreement.[13]

38. Trade and mobility agreements have also introduced regulated recruitment systems to counter the specific issue of unethical recruitment and dismantle unscrupulous fee structures. In some cases, shared migration databases have been instituted between States to coordinate migration efforts and ensure that low-wage workers are engaged in employment that better matches their skills and qualifications. The Special Rapporteur received information about the Employment Permit System of the Republic of Korea, which has nearly eliminated recruitment fees for migrants but remains compromised by power imbalances where countries of origin may require deposits and encourage reporting among migrants to ensure that workers do not overstay their visas.[14]

[12] United Nations Inter-Agency Project on Human Trafficking, "Exploitation of Cambodian men at sea" (29 April 2009).

[13] International Institute for Labour Studies, *Social Dimensions of Free Trade Agreements*, (Geneva, ILO, 2015).

[14] Open Working Group on Labour Migration and Recruitment, "South Korea's Employment Permit System: a successful government-to-government model?", Policy Brief No. 2 (2014).

Freedom of expression and association and the right to unionize and bargain collectively

39. The rights of all migrant workers to join and form trade unions are well-established in international human rights and labour law, and ILO has worked tirelessly over decades through its tripartite structure to make this commitment a reality. The Special Rapporteur is concerned, however, that migrant workers are unable to freely exercise their right to join or form trade unions and bargain collectively. In many States, national legislation restricts unionization on the basis of citizenship or legal status, which exacerbates the exploitation of migrants. For example, labour laws in some States may require a minimum number of nationals to form a trade union, whereas other States may require that workers meet specific residency requirements in order to unionize. In both instances, migrants are prevented from exercising their fundamental rights.

40. Migrant workers have experienced obstacles to organizing because they are concentrated in jobs that nationals are unwilling to accept, in remote locations or in sectors that are not subject to regulation. During his visits, the Special Rapporteur noted the existence of sponsorship and *kafala* structures, wherein workers are under the absolute authority of their sponsors and those employed in individual homes are particularly isolated and subject to abuse. Migrants with irregular status may also be intimidated to join or form trade unions owing to threats of loss of employment, deportation or violence, or they may even face discrimination from nationals who view them as competition for jobs.

41. The Special Rapporteur emphasizes that the ability of migrants to unionize is critical to combat the structural power imbalances that permeate the current trade regime. Trade unions play an instrumental role in empowering migrants and ensuring fair terms and conditions of employment. In 2010, after 162 Thai berry pickers were not paid by their employer, Lomsjö Bär AB, three of the workers joined the trade union Kommunal, which pursued the company in court, and the workers eventually received compensation from the Government of Sweden.[15]

42. The Special Rapporteur stresses that development cannot be measured solely by economic gains but must also be evaluated against advancements in the social and cultural dialogue. Trade unions have been effective in facilitating the integration of migrants in countries of destination by fostering collective solidarity and establishing support networks. The European Trade Union Confederation established an online information resource and social network of trade union contact points for migrants across Europe (see www.unionmigrantnet.eu). In Canada, the United Food and Commercial Workers Union organized the Agricultural Worker Alliance, to establish 10 support centres across the country that aid migrant workers by: addressing abusive employers and hazardous workplace and housing conditions; assisting with medical treatment, workers compensation benefits and parental leave benefits; facilitating regularization processes; sponsoring courses on health and safety training and English as a second language; and providing scholarships to children of migrant workers.

43. Trade unions have been critical partners in the prevention of human trafficking and forced labour. The International Trade Union Confederation and the International Union of Food Workers, for example, have played a critical role in curtailing forced labour in the cocoa industry in Côte d'Ivoire by advocating implementation of the Protocol for the Growing and Processing of Cocoa Beans and Their Derivative Products in a Manner that Complies with ILO Convention No. 182 concerning the Prohibition and Immediate Action

[15] ILO Country Office for the Philippines, *A Case Study of Thai Migrant Workers in Sweden* (Manila, 2012).

for the Elimination of the Worst Forms of Child Labour.[16] A partnership between the confederation of workers Rerum Novarum, of Costa Rica, and the Sandinista Workers' Centre and the Confederación de Unificación Sindical, of Nicaragua, led to the creation of the Trade Union Centre for Migrants, which offers free legal and administrative assistance to all migrant workers seeking regularization and aims to combat trafficking in children by partnering with the local taxi drivers' union.[17]

44. Cooperation and coordination agreements between unions in countries of origin and destination too are effective in addressing protection gaps and galvanizing migrants across borders. In 2014, representatives of the Congress of South African Trade Unions, the Zimbabwe Domestic and Allied Workers Union, the South African Domestic Service and Allied Workers Union, the Federation of Unions of South Africa, the Congress of Lesotho Trade Unions and the Zimbabwe Congress of Trade Unions signed a declaration to support each other, strengthen the capacity of national unions to assist local and migrant domestic workers and lobby their respective Governments to continue to implement their decent-work country programmes.[18] The Special Rapporteur believes cooperation agreements can be used by States to develop institutional links with trade unions and ensure that unions are partners in trade negotiations.

45. Having recognized the important role of trade unions, States parties to trade agreements have begun to include provisions protecting the rights of migrants to unionize and bargain collectively. In some cases, this has improved domestic protections for organized labour. In 2006, as a result of pre-ratification pressure stemming from its trade agreement with the United States, Oman granted workers the right to unionize.[19]

46. The Special Rapporteur emphasizes, however, that this is not the case in all contexts, especially where domestic courts fail to uphold the rights of migrants to organize, as was the case in Canada in *Ontario (Attorney General) v. Fraser* (2011).

Impediments to access to justice, due process and the right to an effective remedy

47. International human rights law protects, inter alia, the right of an individual to an effective remedy from the competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of a State, and the possibilities of judicial remedy.

48. The Special Rapporteur is aware that some countries of origin have resisted providing support to migrants seeking effective remedy so as not to endanger their competitiveness in the international labour market or their ability to benefit from remittances. The British Columbia Labour Relations Board found that Mexican authorities had blacklisted migrant workers who had participated in the Canadian Seasonal Agricultural Workers Program for supporting unions and prevented workers from participating in the Program the following season because they feared that if Mexican workers unionized they would be replaced by workers from Guatemala.[20]

49. Where migrants do not receive support from their Government, the onus falls on migrants to notify authorities and file complaints of violations of their rights. Migrants may face several obstacles in accessing legal remedies, however, including: lack of knowledge

[16] International Trade Union Confederation, *How to Combat Forced Labour and Trafficking: Best Practices Manual for Trade Unions* (Brussels, 2009).

[17] Ibid.

[18] See www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=163.

[19] International Institute for Labour Studies, *Social Dimensions of Free Trade Agreements*.

[20] See www.labourlawoffice.com/wp-content/uploads/2015/08/BM5.pdf.

of the employment terms, since there is no written work contract; lack of knowledge of the terms of the trade or mobility agreement and, where there are competing agreements, the applicable framework; lack of knowledge of national labour and migration laws or the local language; lack of access to competent representation or legal aid; obstacles to unionization; and fear of retaliation from employers or deportation. In the Guiding Principles on Business and Human Rights, it is acknowledged that migrants often do not enjoy the same level of legal protection of their human rights as the wider population and that this prevents valid cases involving business-related human rights abuses from being adjudicated.

50. Most trade agreements aim for settlement between the parties outside of judicial review. Examples of such agreements have been concluded with, among others: ASEAN, the European Free Trade Association, the Southern Common Market (MERCOSUR), NAFTA, the Southern African Customs Union and SADC. Similar trade agreements have also been concluded between Japan and Switzerland and between Tunisia and Turkey, among others. It is worth noting, however, that some trade agreements can be invoked before domestic courts, for example in Argentina, Brazil and Mexico.

51. Given the endemic power imbalances in the trade regime, it is not surprising that Governments have rarely brought forward labour cases in the context of trade and may even challenge them. The majority of cases end up stalled in administrative channels created under the trade terms. Very rarely, other outreach solutions have been identified to remedy violations of migrants' rights. NAFTA has an advanced dispute settlement mechanism, but the remedies available are illusory and beg the question of enforceability, since the North American Agreement on Labour Cooperation (NAALC), an accord parallel to NAFTA, only provides for binding remedies where an arbitral panel finds a violation relating to child labour, occupational health and safety, or minimum wages. Penalties are not imposed for labour standards violations and complaints rarely advance beyond the national administrative offices established to monitor NAFTA. In the so-called "Washington State apples case" (1998), when Mexican workers filed a complaint under NAALC alleging violations of their rights to unionize and bargain collectively, to protection from discrimination and to health and safety, and alleging that employers used threats and intimidation, the Washington State authorities established a complaints hotline in Spanish, produced Spanish-language information materials and recruited additional Spanish-speaking staff in the agriculture sector.

52. The Special Rapporteur emphasizes that strengthening access to justice for migrants to pursue judicial remedies directly is essential to combat asymmetry in the trade regime (see sect. V below).

Economic, social and cultural rights and integration

53. Under international law, States have a binding obligation to ensure the economic, social and cultural rights of all individuals without distinction, including the right to work, which provides migrants with compensation that is equal to that provided to nationals, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure and a reasonable limitation on working hours and periodic holidays with pay, as well as remuneration for public holidays. States also have the responsibility to respect and uphold the rights to, inter alia, education, health, social security, housing, food and water, a healthy environment and culture in a manner that promotes non-discrimination, dignity and freedom for migrants.

54. The Special Rapporteur is concerned that the respect, protection and fulfilment of economic, social and cultural rights remain too often elusive for migrants, especially low-wage workers or those in an irregular situation. States have not consistently established policies with corresponding accountability mechanisms that ensure the full range of economic, social and cultural rights for migrants, regardless of legal status. The Special

Rapporteur is aware that many migrants are not able to access housing and, as a result, live in overcrowded or substandard housing. Migrants rarely have access to medical care and the necessary social services and benefits systems in transit or destination countries. Migrant children may be denied the right to attend school owing to their or their families' irregular status. In some cases, trade effects may result in environmental degradation or supply-chain offences such as trafficking, forced labour or child labour, which compel migrants to leave their country of origin.

55. Trade agreements can be effective in developing robust systems for the monitoring and enforcement of economic, social and cultural rights in a way that reduces the economic and social costs associated with migration and facilitates the integration of migrants into the destination country. Where necessary, firewalls can also be created between immigration enforcement and public services so that public officials are able to perform their important social functions without interference. The Caribbean Community established the Council for Human and Social Development, composed of ministers of the member States, who convene to discuss labour and other social issues.

56. Trade agreements have also enhanced the portability of social security and other acquired rights, promoted the mutual recognition of diplomas, qualifications and skills, supported the education and training of migrants, and lowered the transfer costs of remittances. MERCOSUR guarantees migrants equal civil, social, cultural and economic rights and freedoms as nationals in the destination country, particularly the right to work and to carry out any legal activity. The Ibero-American Multilateral Agreement on Social Security, to which two European and 12 Latin American countries are signatories, covers all persons who have been subject to the social security legislation of any of the signatory States and their family members, and provides for cash benefits in the event of disability, old age, death of a family member and employment-related injury.

Humaa rights concerns of vulnerable population groups

57. The Special Rapporteur recommends that special attention be paid to the potential impact of trade on migrants who may be further marginalized by other intersecting mutable or immutable characteristics, for instance gender, age, race, minority or indigenous status, disability, medical condition or sexual orientation. While these traits are not inherent vulnerabilities on their own, migrants in these groups may be more at risk of exploitation and abuse because of their irregular status and precarious labour contracts.

Gender

58. The Special Rapporteur stresses that the services sector constitutes the largest employer for women worldwide and believes that well-facilitated and regulated migration can offer women unprecedented opportunities for financial independence and upward mobility. It is promising that regional agreements such as COMESA have prompted the elimination of discriminatory national legislation against women.

59. Women, particularly those in the care sector, are especially vulnerable to exploitation and abuse, as they work in physical and social isolation. Men too may experience abuse and exploitation, in sectors such as construction and agriculture. The Special Rapporteur believes in the importance of trade agreements providing all migrants with the opportunity to seek redress for human rights and labour standards violations, without fear of detection, detention and deportation.

Children

60. Migrant children have unique concerns in the context of trade, as they comprise a significant proportion of child labourers in informal sectors, as well as in the commercial

sex industry. In 2010, in the context of the trade agreement between Panama and the United States, the National Bureau against Child Labour and for the Protection of Adolescent Workers was established within the Panamanian labour department. The partnership agreement between the members of the African, Caribbean and Pacific States and the European Union, also known as the Cotonou Agreement, provided for the creation of cooperative education programmes towards the elimination of child labour.

61. For children whose parents are migrant workers, being excluded from education and health systems in the destination country can have lasting consequences on physical and mental health and development. In its 2004 publication "Free trade and children", the United Nations Children's Fund (UNICEF) sheds light on the situation of migrant children, in the context of CAFTA-DR, who are disproportionately at risk of poverty, family disintegration and malnutrition because of declines in the agricultural sector and rural employment.

B. Structural impact on the rights of migrants

Protectionism, power imbalances, asymmetry and persistent inequalities

62. The Special Rapporteur reiterates that the manner in which international trade regulations and negotiations have been dominated by high-income countries has had tremendous consequences for the most vulnerable segments of the population, specifically migrants. Throughout the development of the multilateral trade regime, the protectionist approach to specific sectors has prevented developing economies from reaping the benefits of free trade where they have a comparative advantage in medium-to-low-wage labour. As migrants have continued to move towards high-productivity regions, the economic and political clout of developed countries has seriously undermined negotiations, monitoring and accountability in trade and mobility arrangements. Within WTO, high-income countries have filed the most complaints, largely owing to their superior financial and legal resources.[21] Empirical studies also indicate that, when developing countries sue high-income countries, they tend to experience longer delays between the end of litigation and the beginning of compliance proceedings. In 2009, in recognition of inherent asymmetry in the global economy, heads of the Group of 20 pledged not to repeat the same protectionist mistakes in trade, but the International Monetary Fund reports that during the financial crisis 17 of the 20 countries imposed trade restrictions, distorting aggregate world trade by at least 0.25 per cent ($50 billion per year). As a result of institutionalized inequities, migrants' concerns become even more attenuated in the context of trade, even though trade decisions have a direct impact upon migrants' rights.

63. There must also be greater balance between the protections afforded States and investors and all other persons in the jurisdiction of trade parties. Rule of law and judicial oversight are compromised when investors can bypass the exhaustion of national remedies before seeking relief in supra-national tribunals, for example in investor-State dispute settlement tribunals. While investor-State dispute settlement provisions are included in trade and investment agreements throughout the world, 60 per cent of all cases in 2014 were brought against developing countries and countries with economies in transition.[22] Although more cases are progressively being filed against developed countries, investors in capital-exporting countries have filed more than 80 per cent of all investor-State dispute

[21] Martin A. Weiss and others, "International investment agreements (IIAs): frequently asked questions", Congressional Research Service (15 May 2015).

[22] Ibid.

settlement claims.[23] There is no ceiling on the tribunal's compensation awards, and decisions are binding without appeal. As a result, the investor-State dispute settlement process has also had an undeniably chilling effect on the enforcement of rights, as States are less likely to rule in favour of the public if they are required to pay exorbitant fees as settlements. Remedies have also been disproportionately skewed in favour of high-income countries (see A/70/301).

Violation of the right to information, lack of transparency and meaningful participation in public affairs

64. The recent negotiation of the Trans-Pacific Partnership, the Trans-Atlantic Trade and Investment Partnership and the Trade in Services Agreement, which comprise at least two thirds of global trade in services, highlight the lack of transparency, opportunities for public dialogue and accountability surrounding trade negotiations. Like other mandate holders, the Special Rapporteur remains concerned about the extent to which transnational corporate interests have prevailed over public discourse and accountability for observing human rights standards. Although trade regimes have a significant impact on the lives of migrants, they rarely offer migrants or their representatives opportunities for meaningful participation in negotiation processes, which violates migrants' fundamental rights to self-determination, access to information and public participation. The Special Rapporteur is not aware of migrants' groups being consulted in these negotiations; more broadly, civil society does not participate in trade negotiations sufficiently. Despite power imbalances in the international trade regime, States repeatedly fail to reform trade negotiations to make them more transparent or strengthen accountability through enforcement against related rights violations.

65. The Special Rapporteur is pleased that the Canada-Colombia Free Trade Agreement includes binding provisions allowing any person residing in either country to submit a written inquiry to the national authorities and obliging the Governments to make the questions and responses public. He stresses, however, that it is important that the terms of such provisions be clear and actually provide meaningful opportunities for participation.

Merits of bilateral labour mobility regulation

66. Since the 1960s, the emergence of bilateral labour mobility agreements to govern medium- and low-wage migration has been a positive development, as States have greater flexibility to facilitate mobility across skills levels, address social protection gaps and respond to labour market needs than in the multilateral trade framework. ILO estimates that, in 2015, at least 358 bilateral labour mobility agreements were in existence.[24]

67. A recent shift towards incorporating mobility in framework agreements, memorandums of understanding and declarations of mutual cooperation has resulted in States treating labour mobility agreements as informal and non-binding. In Asia, almost 70 per cent of labour mobility arrangements employ the informal framework provided by memorandums of understanding, compared with 30-40 per cent in Africa, Europe and the Americas.[25]

68. The Special Rapporteur is concerned that bilateral labour mobility agreements erode existing social and mobility protections granted through commitments in other agreements, which increases the precariousness of workers by exposing them to the vulnerabilities of

[23] Ibid.

[24] International Labour Office, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (Geneva, 2015).

[25] Ibid.

displacement. He also notes that bilateral labour mobility agreements have not always been comprehensive in the protections they afford migrants and systematically fail to cover the entire migration cycle, to address gender-specific concerns, to provide for consultation with stakeholders outside of government, to integrate wage protection measures and to prohibit the confiscation of travel and identity documents.

69. The Special Rapporteur stresses that, even with the emergence of bilateral labour mobility agreements intended to improve social protections and curb illicit activity, the systemic abuse of migrants has continued, accompanying irregular migration, migrant smuggling, forced labour, child labour and human trafficking.

70. The Special Rapporteur proposes a global mobility framework in bilateral and multilateral trade agreements that would strengthen protections for migrants. Such a framework would build upon the protections specified in the ILO Multilateral Framework on Labour Migration (2006) and the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86), to which a model agreement on temporary and permanent employment is annexed and includes provisions relating to recruitment, equality of treatment, education and vocational training, housing and employment contracts, among other provisions.

V. Promoting the human rights of migrants

A. Improving State accountability, effective monitoring and oversight

71. In keeping with the principles advocated by the Working Group on Business and Human Rights and other mandate holders, States must ensure that the trade agreements they conclude reflect their obligations under international law. According to the Guiding Principles on Business and Human Rights, this means that States must not breach international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. States also have a duty to refrain from ratifying agreements that make it more difficult to uphold fully human and labour rights.

72. The Special Rapporteur wishes to provide States with guidance on how to ensure that the trade agreements they conclude are consistent with their obligations towards migrants under international law. The Special Rapporteur understands that there is no blanket solution that will remedy all of the challenges related to trade and migration, but he believes that the systematic inclusion of a series of processes and provisions during trade negotiations would establish a strong institutional framework for the protection of migrants' rights. Such a system would include explicit references to international human rights and labour instruments in trade provisions, the dissemination of information about the draft terms of trade agreements and opportunities for public discourse about trade implications and the collection of reliable data that is made public to better inform trade policies and migration patterns.

73. The Special Rapporteur underscores the need to conduct human rights impact assessments reflective of the relevant national contexts and capacities (human, financial, political and technical) to determine appropriate provisions relating to general exception clauses, judicial remedies and other compensatory, adjustment, grievance and remedial mechanisms. These arrangements must be accompanied by monitoring and enforcement mechanisms that are developed in consultation with migrants and are continuously monitored to ensure their effectiveness. A national agency designated with independently monitoring all of the relevant ministries involved in migration matters may facilitate a comprehensive understanding of the labour migration experience of migrant workers. The

awareness of labour inspectorates, national human rights institutions and ombudspersons regarding the concerns of migrants should also be raised and such entities should be tasked with ensuring that the human rights of migrant workers are being observed in the implementation of trade agreements.

Ex ante and ex post human rights impact assessments

74. Human rights impact assessments are particularly useful when considering the human rights of migrants since they emphasize non-discrimination as a key guiding principle and shift the focus away from the aggregate outputs of trade to the impact of trade on the most vulnerable groups. In addition, human rights impact assessments strengthen accountability and empower rights holders. They may include subregional and national assessments, specific case studies and regional surveys, all of which can be critical in assessing the direct and systemic impact of trade on the rights of migrants.

75. The value of conducting ex ante human rights impact assessments during trade negotiations is essential for identifying and mitigating risks, as demonstrated by the assessment of the Continental Free Trade Area agreement currently being carried out with the support of OHCHR. An analysis of the assessment stresses the distributional gains for different segments of the population while emphasizing the importance of recognizing migrants' skills and qualifications and the need to continue to develop workers' skills through training and education.

76. The European Union systematically conducts sustainability impact assessments (economic, social and environmental impact assessments) of all major multilateral and bilateral trade negotiations. The assessments offer projections for migration flows and specific considerations, depending on the trade partner, relating to skills, sector, visa provisions, wages, labour conditions and vulnerable social groups.

Strengthening the evidence base for policymaking

77. The Special Rapporteur reiterates the importance of collecting reliable data on all aspects of the migrant labour market, including irregular migratory channels, recruitment practices and the informal sector, and data disaggregated by skills, age, gender, race and national origin, among other characteristics. Having such data would allow States to learn about and respond to their actual labour market needs. The inclusion of migration in the 2030 Agenda for Sustainable Development provides a framework for data collection, as States have already collectively agreed that migration is a priority that needs to be continuously monitored. Under target 17.18 of the Sustainable Development Goals, States have agreed to enhance capacity-building support to developing countries by the year 2020 to increase the availability of high-quality, timely and reliable data disaggregated by, inter alia, migratory status.

78. It is equally important that information about the operation of migration programmes be made publicly available so that migrant workers can confirm the legitimacy of recruiters and employers. Increased transparency would also ensure public accountability for the operation of labour migration programmes and make it easier for government agencies and advocates working to protect migrants' rights to gain access to information.

Enforceable human rights provisions

79. The Special Rapporteur points out that several trade agreements also include provisions for termination for material breaches of trade terms in keeping with the Vienna Convention on the Law of Treaties. Where parties to a trade agreement have required the inclusion of human rights provisions in the agreement, as the European Union has done, they must specify that the human rights clause is an essential element of the trade

agreement. Doing so will ensure that they have grounds to terminate the trade agreement where migrants' rights have been violated.

General exception clauses

80. General exception clauses have served as an effective means of advancing good-faith measures by States to pursue public welfare objectives. In the context of the General Agreement on Tariffs and Trade and WTO, States have already acknowledged that, without the introduction of appropriate safeguards and implementing national legislation, trade rules and policies can have an adverse impact on workers' rights. They have used exception clauses to address forced and child labour and introduce other protections by requiring the adoption of labour standards.

81. The Special Rapporteur believes it is promising that the proponents of general exception clauses have been geographically and economically diverse. Several countries from Asia and the Pacific and South America have included general exception clauses in trade agreements. General exception clauses also appear in the treaty programmes of Canada, Mauritius and Turkey, as well as in multilateral agreements such as the Investment Agreement for COMESA.

Access to judicial remedies

82. The Special Rapporteur stresses the need for migrants to be able to seek remedies directly in public courts and tribunals: the independence of the judiciary and the type of public oversight that are guaranteed by the international human rights framework are essential to the preservation of fundamental rights. As has been discussed, the complex, opaque and multilayered nature of the current trade regime obscures migrants' knowledge of their rights, legal recourses and available remedies. Under the current dispute settlement mechanisms included in trade agreements, migrant workers submit to a separate, privatized standard in order to seek relief for trade infractions and are required to go through traditional, costly and more onerous administrative channels to obtain remedies. Migrants also become reliant upon States to pursue their claims where States may have separate, distinct and, at times, competing interests. Ensuring the availability of outlets to pursue remedies in public courts would increase State accountability and also inform public discourse about labour migration programmes and the treatment of migrant workers. It is also by removing barriers to justice that migrants will be empowered to independently pursue their own fundamental human rights.

Balanced accountability and representation in international organizations

83. The Special Rapporteur stresses the importance of States holding each other accountable for the manner in which their citizens are being treated while abroad. Beyond dispute settlement mechanisms and judicial remedies, States should consider utilizing all of the international human rights and ILO mechanisms to address concerns about the treatment of migrant workers, who would be better protected if trade agreements made explicit reference to international human rights and labour instruments.

84. Greater attention should also be paid to ensuring that international mechanisms in the areas of trade and migration do not disproportionately penalize developing countries and that they are accountable and representative of all stakeholders. The Special Rapporteur believes there is a need to create stronger institutional links between trade and labour rights in the international framework.

Importance of civil society

85. Trade unions, non-governmental organizations and other civil society actors have served an important function in raising awareness of the rights of migrants and reporting to international human rights mechanisms. For example, the Centre for the Rights of Migrants in Mexico conducts qualitative investigations of migrants' experiences, reports abusive recruitment practices, advocates legislative reform, engages in impact litigation, files complaints under NAFTA and conducts trainings at the Inter-American Commission on Human Rights.

B. Enhanced migration partnerships and cooperation, including with the private sector

86. States retain the primary responsibility for addressing the human rights impact of trade liberalization. However, trade agreements have served as a vehicle for private actors, including the business community, to understand human rights and offer critical insight into effective policies for the management of migrant labour. Private actors have also helped remedy some of the governance gaps related to mobility and trade policies in order to mitigate liability, develop new markets and advance social responsibility. The United States-Cambodia Bilateral Textile Agreement initiated a multi-stakeholder policy reform process whereby the United States offered Cambodia better access to the garment market in return for improving working conditions in its factories.

87. The Special Rapporteur is aware of several multi-stakeholder action plans that engage States, the private sector and trade unions in the articulation and promotion of ethical labour standards for migrant workers. The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers aims to strengthen the protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN countries. The Institute for Human Rights and Business organized a series of multi-stakeholder round tables during the period 2009-2012 with Governments, multinational corporations, trade unions and other members of civil society to produce the Dhaka Principles for Migration with Dignity (2011), which promote the responsible and ethical recruitment of migrant workers. Business for Social Responsibility led a pilot project in Malaysia with the non-governmental organization Tenaganita that resulted in the production of a management toolkit for migrant workers.

88. States have also collaborated to lower the human, social and economic costs of migration and expand opportunities for migrants to invest their earnings more productively. The Maya Declaration of the Alliance for Financial Inclusion unites over 57 financial service providers in emerging and developing economies to promote financial inclusion by, for example, lowering the costs of remittances and promoting digital financial services.

89. Multi-stakeholder partnerships have also engaged migrants and diaspora organizations in developing their communities of origin and destination. The Patrimonio Hoy programme of Cemex, a company operating in the building materials industry, provides migrant families with financing, construction materials and technical assistance so they can erect or expand their homes. In the United States, workers participating in the Fair Food Program play a leading role in monitoring and protecting their rights. Some retail brands have made a binding commitment to support the enforcement of human rights by leveraging their purchasing power.

VI. Conclusions and recommendations

A. Conclusions

90. **The development of international trade is in the interest of all, but respect for the human rights of all individuals, regardless of their status, must be the fundamental principle that guides economic growth and advancements in social welfare.**

91. **The Special Rapporteur realizes that there is no one-size-fits-all solution to today's global challenges but he hopes that shedding light on this important area and offering recommendations will serve as point of departure for further exploring the issues and identifying practical solutions. It is only if we take active measures to merge human rights and trade considerations that we will mitigate the inherent power imbalances in the global economy and the asymmetrical emphasis on economic efficiency and short-term gains to the detriment of migrant labour. Facilitated and well-regulated mobility that is supported by comprehensive and robust institutional frameworks is necessary to ensure inclusion and equity in the enjoyment of the benefits of trade.**

B. Recommendations

92. **To address the direct impact of international trade on the human right of migrants, the Special Rapporteur recommends that:**

(a) **States ratify the core international human rights treaties, particularly those that recognize the rights of migrant workers, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO fundamental conventions, the ILO migrant workers conventions (the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)), other ILO conventions (particularly, the Labour Inspection Convention, 1947 (No. 81), the Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86), and the Domestic Workers Convention, 2011 (No. 189)), all other conventions that may offer protections for migrant workers, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Convention relating to the Status of Refugees;**

(b) **States immediately begin to include explicit references to international human rights and labour instruments in all new and renegotiated trade agreements;**

(c) **States ensure that trade and mobility agreements do not erode existing social and mobility protections granted through commitments in other agreements;**

(d) **States and international organizations develop a global mobility framework, in consultation with trade unions and civil society, and include the framework in trade agreements with a view to protecting the rights of migrants;**

(e) **States strengthen monitoring and enforcement of labour standards in all stages of the migratory process, from pre-departure and recruitment in the country of origin to employment in the destination country; extend oversight to traditionally unregulated and informal sectors and include labour inspections and auditing in value-addition and supply chains; end impunity for abusive immigration officials, recruitment agents, employers and others for violating migrants' rights, including**

through the use of sanctions and monetary fines; and adopt legislation, allocating appropriate resources and pursuing ministerial consultations if a trade party has not complied with trade terms;

(f) States adopt an all-of-government approach to migration and ensure that national human rights institutions and ombudspersons are trained and mandated to report on violations of migrants' rights;

(g) States protect the rights of migrant workers to unionize and engage with trade unions and migrants' associations in the development of institutional frameworks relating to trade;

(h) States ensure that trade agreements include measures to reduce the social and economic costs associated with migration such as: establishing firewalls between immigration enforcement authorities and agencies that provide public services; ensuring the right to work; overseeing recruitment processes; ensuring the portability of social security and other benefits; reducing the costs of remittances; removing obstacles to issuance of visas; and ensuring the recognition of professional qualifications, among other measures;

(i) States ensure that trade agreements include provisions for migrants to directly access public courts and tribunals, including by ensuring the availability of translation and legal resources for migrants to file individual or collective complaints where their rights have been violated as a result of a trade agreement; and monitor access to labour-related administrative services, tribunals and courts to ensure that migrants do not face obstacles in accessing effective relief for violations of their rights;

(j) States and international organizations consider a cooperation framework agreement between WTO and ILO to strengthen institutional links between labour rights and trade, including through the allocation of funding (such a mechanism may provide for the development of guidelines, sharing of good practices and a dispute settlement mechanism);

(k) States, civil society, migrants' associations and trade unions invest in the targeted collection of data to increase understanding of the impact of trade agreements on the human and labour rights of migrants and ensure the information is publicly available; and conduct studies that include data disaggregated by gender, age, race and national origin, among other categories, on recruitment and the irregular, informal and low-skill sectors;

(l) States collaborate towards the development of multi-stakeholder action plans that engage employers, trade unions, migrants' associations and other members of civil society in the promotion of decent work and share best practices;

(m) States explore other programmes to engage the private sector and include in trade terms a commitment to, among other things migrant outreach, legal expertise to strengthen labour laws, assistance to trade unions, training courses for labour inspectors and pre-departure recruitment and orientation services, and, in order to ensure the sustainability of these initiatives, include in trade agreements provisions for the financial and other resources necessary to administer them.

93. **To address the structural impact of international trade on the human rights of migrants, the Special Rapporteur recommends that States:**

(a) When negotiating trade agreements, seek technical support from United Nations organizations and specialized agencies, notably OHCHR, ILO, WTO and UNCTAD, to help ensure that the relevant provisions in such agreements respect, promote and fulfil international human rights standards;

(b) Explore, jointly with migrants, migrants' associations and trade unions, opportunities to increase the level of public involvement in the negotiation and drafting of trade agreements, which would include disseminating information during trade negotiations and introducing a range of participatory mechanisms that would enable migrants to submit queries, comment on or take part in the negotiation and drafting of all relevant investment and trade agreements;

(c) When entering into trade agreements, undertake comprehensive ex ante and ex post human rights impact assessments that consider the rights of migrants through direct consultations with migrants, migrants' associations and trade unions, and, on the basis of these assessments, include relevant general exception clauses and other compensatory, adjustment, grievance and remedial mechanisms — which may include minimum wage provisions, welfare funds to support migrant workers, strengthened consular support, voluntary insurance schemes for migrants and other housing or transitional assistance — and termination clauses, among other measures;

(d) Ensure that gender-specific considerations are adequately integrated into the development of such human rights impact assessments so that the impact of trade agreements on the human rights of migrant women and men are identified and effectively mitigated;

(e) Ensure that child-specific considerations are adequately integrated into the development of such human rights impact assessments so that the impact of trade agreements on the human rights of migrant children are identified and effectively mitigated;

(f) Involve representatives of migrants in the negotiating process for all bilateral and multilateral trade agreements, including representatives of vulnerable groups, when human rights impact assessments have identified potential issues relating to migrants;

(g) Include provisions for labour mobility in multilateral and regional trade agreements, rather than in informal bilateral labour mobility commitments, with full and explicit respect for migrants' rights;

(h) Ensure that dispute settlement mechanisms included in all new and renegotiated trade agreements do not contravene States' abilities to protect migrants' rights;

(i) Require annual reporting on the impact of their trade and investment agreements on human rights in each country and make the information publicly available.

94. The Special Rapporteur recommends that the United Nations and related organizations:

(a) Ensure that human rights considerations related to trade and investment agreements are included in State reports to the international human rights mechanisms;

(b) Continue to provide States, the private sector, trade unions and other civil society actors with information, guidance and best practices aimed at protecting the rights of migrants in the context of trade;

(c) Continue to provide States with technical and capacity-building assistance in conducting human rights impact assessments and in adequately supporting the work of national human rights institutions and ombudspersons;

(d) Ensure ongoing collaboration and mainstreaming of human rights and labour standards, including all those relating to migrants, among all United Nations and related agencies that work on issues relating to investment and bilateral and multilateral trade agreements, including OHCHR, ILO, WTO and UNCTAD;

(e) Strengthen the evidence base for policymaking in trade as it pertains to the rights of migrants through targeted consultation and research, including through the collection of data disaggregated by gender, age, national origin and race, among other categories, on recruitment and on informal and irregular channels.